IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11328 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAUTAM @ PUNJILAL BHEMJI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE & MS BANNA DATTA for Petitioner

MR ND GOHIL LEARNED AGP FOR Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2001

ORAL JUDGEMENT

1. Learned Advocate Ms Banna Datta appearing on behalf of the petitioner. Learned AGP Mr. N.D.Gohil appearing on behalf of respondents State. In present petition the petitioner is challenging the order of detention dated 16.10.2000 passed by the Police Commissioner Ahmedabad City under Section 3 sub Clause 1 of PASA Act. The present petition is filed on 2.11.2000 and this Court has issued rule on 8.11.2000 with a direction to the respondents State to file Affidavit in reply prior to returnable date i.e. 6.12.2000. Thereafter on two occasions, the present matter has been

adjourned on 14.2.2001 and 28.2.2001 and on both the occasions learned AGP requested for time for filing the reply but no reply has been filed by the respondent State against the present petition. Thereafter the matter had been adjourned on 27.3.2000 and 30.3.2000 and thereafter the matter has been finally heard today by this Court.

2. Learned Advocate Ms Banna Datta challenged the detention order on the ground that page 68 Annexure-D is representation of the petitioner dated 18.10.2000 addressed to the detaining authority and page 70 is an acknowledgement which has been received from the detaining authority dated 19.10.2000. Learned Advocate Ms Banna Datta has submitted that petitioner received the reply from the detaining authority dated 21.10.2000 where the name of the petitioner is mentioned Gautam @ Premji Nathubhai Patel but in fact the name of the present petitioner is Gautam @ Punjilal Bhemji Patel and therefore, according to the submission of learned Advocate for the petitioner the detaining authority has not considered at all the representation which was submitted by the petitioner through his Lawyer dated 18.10.2000 and the detaining authority has considered the representation of the other detenu whose name is Gautam Premji Nathubhai Patel and therefore representation of the present petitioner is remained without consideration of detaining authority.

3. The second contention raised by the learned Advocate Ms Banna Datta that in ground of detention which was communicated to the petitioner dated 16.10.2000 under Section 9 sub Clause 1 of the PASA Act wherein internal page 3 it is submitted by the detaining authority that at present petitioner is in judicial custody in respect to the two offences which were registered against the present petitioner. Learned Advocate Ms Banna Datta submitted that if the petitioner in judicial custody at the time of passing the detention order against the petitioner then the detaining authority must have considered a cogent material for having a reasonable apprehension about release of present petitioner from the judicial custody. Therefore, according to the learned Advocate Ms Banna Datta there was no cogent material or likelihood of the detenu being released on bail and detenu will move an application for bail. In absence of cogent material the order of detention which has been passed is also vitiated. She relied upon the two decisions of the Apex Court; one is reported in 1985 Supreme Court Cases (Criminal) page No. 514 and other decision in case of Amritlal & Others Vs. Union Government reported in 2001(1) Supreme Court Cases page

341. She submitted that in both the cases the Apex Court has observed that merely on the ground that an accused in detention has an under trial prisoner was likely to get bail order of detention should not ordinarily be passed. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. She further submitted that the subjective satisfaction while passing the detention order is also required to be justified by the detaining authority. She submitted that in recent decision in case of Amritlal & Others, the Apex Court has observed that when the detenu is already in jail, in that circumstances, detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail. In absence of such satisfaction detention order cannot be sustained.

4. Learned AGP Mr. N.D.Gohil appearing on behalf of the respondents State has submitted that detaining authority has considered in ground of detention for lesser drastic remedy while approaching under Section 437 sub Clause 5 of Criminal Procedure Code which will be a time consuming process and meanwhile the activity of the petitioner will definitely disturb public order and peace. However, learned Advocate Mr. Gohil is not able to give any answer in respect to the fact that the representation dated 18.10.2000 has not been considered by the detaining authority but it was considered of other detenu having the similarity of the name Gautam @ Premji Nathubhai Patel.

5. I have considered the submissions of both the learned Advocates and also considered the factual undisputed position which are on record. Considering the ground of detention and also considering the undisputed position that two offences which were registered against the present petitioner, at that time petitioner was in judicial custody and considering the two decisions of the Apex Court as referred above, according to my opinion, while passing the detention order the detaining authority has not considered the cogent material about likelihood of the detenu being released on bail and merely about likelihood of his moving application for bail has been considered in absence of such cogent material, it amounts to not justify the subjective satisfaction while passing the detention order against the present petitioner and the representation is also not considered by the detaining authority which was filed through Advocate on

18.10.2000. The answer which has been given by the State Government on 30.10.2000 along with the letter dated 21.10.2000 of detaining authority is altogether in different name of other detenu and not in the name of present petitioner and therefore the present order of detention is vitiated and resulted to required to be quashed and set-aside.

6. For the reasons recorded hereinabove the petition succeeds and the same is allowed. The order of detention dated 16.10.2000 is vitiated and resulted to quash and set-aside. The detenu Gautam @ Punjilal Bhemji Patel who has been detained at present in Nadiad District Jail be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. No order as to costs.

Direct service is permitted.

(H.K.Rathod, J)

Jayanti*